



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

December 15, 2021

OFFICE OF  
LAND AND EMERGENCY  
MANAGEMENT

### MEMORANDUM

SUBJECT: Recusal Statement

FROM: Carlton Waterhouse  
Deputy Assistant Administrator

TO: Barry N. Breen  
Acting Assistant Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and have been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed.

#### *FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal financial conflict of interest law, 18 U.S.C. § 208(a), I may not participate personally and substantially in any particular matter having a direct and predictable effect on my financial interests, or the financial interests of a person or entity whose financial interests are imputed to me, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption as outlined in 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse and minor child; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner, or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised by OGC/Ethics that I have a financial interest in the **Howard University School of Law** in Washington, DC from which I have taken a two-year, unpaid leave of absence. Therefore, I may not participate personally and substantially in any particular matter that, to my knowledge, has a direct and predictable effect on the financial interests of Howard University School of Law unless I first obtain a written waiver or my participation is permitted by a regulatory exemption, including the exemption for employees on leave from institutions of higher learning allowing participation in certain matters of general applicability at 5 C.F.R. § 2640.203(b). This latter exemption allows me to participate in a particular matter of general applicability, such as a rulemaking, so long as it does not have a distinct effect on either of the institution other than as part of class.

#### *OBLIGATIONS UNDER EXECUTIVE ORDER 13989 (the Ethics Pledge)*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I have additional ethics

obligations with respect to the **National Resources Defense Council** and the **Environmental Law Institute** due to my former board memberships, and for **BARBRI, iLaw/BarBri Legal Ed,** and the **National Legal Aid and Defender Association**, for which I provided personal services. The Executive Order provides more restrictions than the federal ethics rules and require that I recuse myself from participating in EPA matters in which any of these entities is a party or represents a party for two years from my EPA appointment date, or **until February 2, 2023**, unless I receive a waiver of these provisions by the EPA Designated Agency Ethics Official after consultation with the White House.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>1</sup> Such a meeting must also include a diversity of interests. Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

#### *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards at 5 C.F.R. § 2635.502(a), I have a “covered relationship” with the **Howard University School of Law** for the period of my leave of absence and for one year thereafter. Therefore, I may not participate in a particular matter involving specific parties in which any of this entity is a party or represents a party during the time period of my recusal, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d).

#### *DIRECTIVE AND CONCLUSION*

To avoid participating in all of the matters outlined above from which I am recused, please direct them to the attention of Becky Brooks or Nick Hilosky without my knowledge or involvement. Should these recusals have a significant impact on my ability to perform my duties, I will seek additional guidance from OGC/Ethics and will consult with them to revise my recusal statement if my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, and provide a copy to you and the Ethics Office.

cc: Justina Fugh, Director, Ethics Office  
Becky Brooks, OLEM  
Nick Hilosky, OLEM  
Ruby Goldberg, OLEM

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<sup>1</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).